

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

RECEIVED

JUN 4 - 1991

In re Application of )  
CLEMSON BROADCASTING, INC. )  
For Construction Permit for )  
a New FM Station, )  
Channel 285A, Clemson, SC )

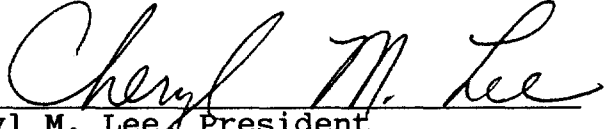
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
FCC FILE NO. BPH-901219MD

To: The Commission

MINOR AMENDMENT

Clemson Broadcasting, Inc. by its President, hereby amends its above-referenced Application to include the attached notification from the Federal Aviation Administration. The instant information is submitted pursuant to 1.65 of the Commission's Rules. No party will be prejudiced thereby, and no comparative advantage will be gained thereby. Good cause for acceptance of this amendment is thus demonstrated.

5-29-91  
Date

  
Cheryl M. Lee, President  
Clemson Broadcasting, Inc.



US Department  
of Transportation  
  
Federal Aviation  
Administration

SOUTHERN REGION  
ATTN: ASO-532  
P.O. BOX 20636  
ATLANTA, GEORGIA 30320  
(404) 763-7646

IN REPLY REFER TO  
AERONAUTICAL STUDY  
NO. 90-ASO-2489-OE

## DETERMINATION OF HAZARD TO AIR NAVIGATION

SPONSOR	Ms. Cheryl Lee Clemson Broadcasting, Inc. 510 Bentbrook Lane Clemson, South Carolina 29631	CONSTRUCTION LOCATION	
		PLACE NAME	
		LaFrance, SC	
CONSTRUCTION PROPOSED	DESCRIPTION  Antenna Tower (104.9 MHz, 3 kw ERP)	LATITUDE	LONGITUDE
		34°36'55"	82°44'43"
		HEIGHT (IN FEET)	
		ABOVE GROUND	ABOVE MSL
		273	1093

An aeronautical study of the proposed construction described above has been completed under the provisions of the Federal Aviation Act of 1958, as amended. Based on the study, it is found that the construction would have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigational facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the construction would be a hazard to air navigation.

This determination is subject to review if a petition is filed by an interested party on or before June 12, 1991. In the event a petition for review is filed it should be submitted in triplicate to the Manager, Flight Information and Obstructions Branch, AAT-210, Federal Aviation Administration, Washington, D.C., 20591, and contain a full statement of the basis upon which it is made.

This determination becomes final on June 22, 1991, unless a petition for review is timely filed, in which case the determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

If the structure is subject to the licensing authority of the FCC, a copy of this determination will be sent to that Agency.

The determination, issued in accordance with Sections 307(a) and 313(a) of the Federal Aviation Act of 1958 as amended, concerns the effect of this proposal on the safe and efficient use of the navigable airspace by aircraft and does not relieve the sponsor of any compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Distribution: ZAT-03

SIGNED Kenneth R. Patterson TITLE Airspace Specialist  
Kenneth R. Patterson System Management Branch  
ISSUED IN East Point, GA ON May 13, 1991

The proposed antenna tower would be located approximately 7.42 nautical miles north of the Anderson County Airport Reference Point. It would exceed obstruction standards contained in Part 77, Subpart C, of the Federal Aviation Regulations as follows:

77.23(a)(3) by 36 feet, a height that increases a minimum instrument flight altitude within a terminal area (TERPS criteria).

The proposal would necessitate raising the Minimum Descent Altitude (MDA) for the Clemson-Oconee County Airport NDB-A approach from 1500 ft. to 1540 ft. Study revealed that with a certified survey of at least a 2C accuracy (+/- 50 ft. Horz. and +/- 20 ft. Vert.), the proposal would not effect the MDA. The proponent has agreed to supply a certified site survey to at least a 2C accuracy.

Study for Electro Magnetic Interference (EMI) effect revealed intermodulation interference with the Greenville, SC, GYH/GMU (108.3 MHz/109.7 MHz) localizer facilities. Our analysis indicates that aircraft operating in the frequency protected service volume (FPSV) making an instrument landing system (ILS) approach to Runway 4 at the Donaldson Center Airport, and Runway 36 at the Greenville Downtown Airport will be subject to hazardous two signal/third order intermodulation interference of the type (A)  $2f_1 - f_2$  and three signal/third order intermodulation interference of the type (B)  $f_1 + f_2 - f_3$  type resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (A): [WANS(107.3 MHz) - PROP(104.9 MHz) = GMU(109.7 MHz)]

Type (B): [WANS(107.3 MHz) + PROP(104.9 MHz) - WLWZ(103.9 MHz) = GYH(108.3 MHz)]

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum and difference frequencies through heterodyne action.

Therefore, it is determined that the proposal would have a substantial adverse effect upon the safe and efficient utilization of the navigable airspace by aircraft and on the operation of air navigation facilities and would be a hazard to air navigation.

The proposal was found to have substantial adverse effects as a result of the internal study and, therefore, public circularization was not deemed necessary.

CLEMSON BROADCASTING, INC.  
BPH-901219MD

AMENDMENT TO APPLICATION  
CLEMSON, SC

ATTACHMENT 1

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 91M-817  
2941

In re Applications of	)	MM DOCKET NO. 90-418
	)	
Q PRIME INC.	)	File No. BPH-890411MA
	)	
SMITH BROADCASTING, INC.	)	File No. BPH-890412MC
	)	
ATWATER KENT COMMUNICATIONS INC.	)	File No. BPH-890412MD2
	)	
COLUMBIA RIVER WIRELESS, INC.	)	File No. BPH-890412MF
	)	
FLORINDA J. WEAGANT	)	File No. BPH-890412MI
	)	
McCOY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-890413MA
	)	
KLRK, INC.	)	File No. BPH-890413MC
	)	
THOMAS M. EELLS	)	File No. BPH-890413MH
	)	
CLARK BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-890413MJ
	)	
BERNARD V. FOSTER	)	File No. BPH-890413MK
	)	
VANCOUVER FM BROADCASTERS LIMITED PARTNERSHIP	)	File No. BPH-890413ML
	)	
COLUMBIA-WILLIAMETTE LIMITED PARTNERSHIP	)	File No. BPH-890413MW
	)	
COLUMBIA FM LIMITED PARTNERSHIP	)	File No. BPH-890413NH
	)	
ANDREW L. BROWN & LESTER M. FRIEDMAN	)	
d/b/a TRANS-COLUMBIA COMMUNICATIONS	)	File No. BPH-890413NL
	)	
For Construction Permit for a	)	
New FM Station on Channel 290C2	)	
in Vancouver, Washington	)	

MEMORANDUM OPINION AND ORDER

Issued: February 28, 1991

Released: March 4, 1991

1. Under consideration are a Motion for Summary Decision filed on February 6, 1991, by Columbia River Wireless ("Wireless"); an opposition filed on February 19, 1991, by KLRK, Inc. ("KLRK"); an opposition filed on February 20, 1991, by Florinda J. Weagant ("Weagant"); and comments in support of the motion filed on February 20, 1991, by the Mass Media Bureau.

2. Wireless seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, 5 FCC Rcd 7160

(1990) ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that the facilities proposed by Wireless may have an adverse effect on the FAA's navigational aid facilities and cause electromagnetic interference ("EMI") with aircraft navigational receivers during final approach and landing at Portland, Oregon. HDO at para. 11. In support of its motion, Wireless states that it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. Wireless contends that this approach has been taken in other Commission proceedings, and that it is appropriate here.

3. KLRK and Weagant oppose summary decision of the air hazard issue arguing that it is procedurally defective, that conditioning a grant to Wireless would be unfair to other applicants whose proposals do not present EMI problems, and that material and substantial questions of fact exist. The Mass Media Bureau supports summary decision, stating that the specified condition will moot the air hazard issue.

4. Wireless's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot. KLRK's and Weagant's arguments to the contrary are unpersuasive and are rejected. Cf. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5879 (Rev. Bd. 1990). Consequently, it is concluded that no genuine issue of material fact remains for determination at the hearing, and that Wireless is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Wireless on February 6, 1991, IS GRANTED, and Issue 3 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that, in the event Wireless's captioned application for a construction permit is granted, such grant will be subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

FEDERAL COMMUNICATIONS COMMISSION

*Arthur I. Steinberg*

Arthur I. Steinberg  
Administrative Law Judge

FCC MAIL SECTION

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Dec 7 12 00 PM '89  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 89M-2754  
789

In re Applications of )  
CISF: )  
ROXANNE GIVENS ) MM DOCKET NO. 89-387 ✓  
MINNESOTA PUBLIC RADIO ) File No. BPH-871202MC  
NANCY JEAN PETERSON ) File No. BPH-871203MC  
SOUTHWEST SUBURBAN BROADCASTING, INC. ) File No. BPH-871203MF  
CRIMIEL COMMUNICATIONS ASSOCIATES ) File No. BPH-871203MH  
LIMITED PARTNERSHIP ) File No. BPH-871203MN  
N. WALTER GOINS ) File No. BPH-871203NE  
JH BROADCAST LIMITED PARTNERSHIP ) File No. BPH-871203NF  
ANNE M. COUNIHAN ) File No. BPH-871203NQ  
COVE COMMUNICATIONS, INC. ) File No. BPH-871203NT  
For Construction Permit for a New )  
FM Station on Channel 289A in )  
Eden Prairie, Minnesota )

MEMORANDUM OPINION AND ORDER

Issued: December 6, 1989;

Released: December 7, 1989

Background

1. This is a ruling on Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio ("MPR"). In its Motion, MPR seeks a form of air hazard issue against five competing applicants: Southwest Suburban Broadcasting, Inc. ("SSBI"), N. Walter Goins ("Goins"), JH Broadcast Limited Partnership ("JH"), Anne M. Counihan ("Counihan") and Cove Communications, Inc. ("Cove"). Oppositions were filed on November 1, 1989, by SSBI, Goins, Counihan and Cove. There is no record of an Opposition being filed by JH. MPR filed its Consolidated Reply on November 20, 1989. <sup>1</sup>

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<sup>1</sup> Allied pleadings were filed as follows: Goins filed a Supplement on November 14, 1989; Cove filed a Supplement on November 6, 1989; and MPR filed an Errata on November 21, 1989.

### Facts

2. An air hazard issue was specified in the Hearing Designation Order (DA 89-1024) against 8 applicants who had not received FAA determinations that their technical proposals would pose no hazard to air navigation. See 4 F.C.C. Rcd 6756, released September 7, 1989, at Paras. 11, 20(5). Only four of those applicants are now prosecuting their applications. However, in a subsequent development, two other applicants, Goins and Cove, received notices from FAA that their clearances were being rescinded. MPR alleges that all applicants in this case face the same Electromagnetic Interference (EMI), all are predicted to have their FAA clearances rescinded and, therefore, each should have an air hazard issue added against the respective proposals. Therefore, in addition to Goins and Cove, air hazard issues are also sought to be added against SSBI, JH and Counihan.

3. The circumstances concerning FAA's re-evaluations stem from computerized calculations for measuring interference with transmission of air navigation facilities. According to MPR's engineering expert, the five applicants succeeded in obtaining initial clearance at a time when FAA was using the so-called "Venn Diagram" analysis technique to measure the potential for interference. Apparently, it was during the pendency of the Eden Prairie applications that the FAA adopted a new procedure for evaluation which is more restrictive called the "Airspace Analysis Model." According to the MPR expert, if the proposals of the applicants who have not received air hazard determinations, or who have had their earlier positive clearances revoked under the new evaluation procedures, all will suffer the same predicted EMI problems which prevented MPR from getting its FAA clearance.

4. The FAA's objections are not based on the heights of any of the proposed facilities but are based instead on the use of Channel 289A in the Eden Prairie area. Therefore, the FAA objections would be the same for all applicants.

### Discussion

5. The Oppositions have been reviewed in docket order. Also, since the same malady seems to apply uniformly to all applicants, a common solution is the most efficient way to resolve the matter rather than add litigation issues.

6. SSBI suggests in its Opposition that rather than litigate a common air hazard issue, the winning applicant should receive a construction permit that is conditioned on resolving the EMI issue with the FAA. Goins, Counihan and Cove have petitioned the FAA for review of their clearance denials which are still pending final resolution.

7. Cove also cites a letter from former Chairman Fowler to the FAA's Administrator dated July 12, 1985. The letter acknowledges that there are ongoing discussions between FCC staff and FAA staff on procedures to ensure against electromagnetic interference to air navigation communication and, as a "first step":

[T]he Commission will add limiting conditions to the authorization (Construction Permit) granted to

broadcast station applicants, to cover those conditions where the FAA considers the nature of the potential electromagnetic interference sufficient to warrant such action, to preclude creating danger to aviation safety.

See Cove Opposition at Exh. 4.

8. Understandably, MPR wishes to see all parties faced with a common issue or be relieved of the need to face the issue. Thus, as ruled at the Prehearing Conference, to the extent that MPR faces an air hazard issue based on a failure to meet FAA EMI requirements, that issue will be treated as moot. Prehearing Conference, November 21, 1989 at Tr. 21-24.

9. In its Reply pleading, MPR notes that SSBI, Goins, Cove and Counihan now have no FAA clearance and JH has defaulted on the motion. There MPR also argues in the alternative that if issues are not added against the other five applicants who, like MPR, have the same problem with EMI, then the issue against MPR should be deleted.

10. Based on the letter communication from the Chairman to FAA in 1985, and with the concurrence of all parties, including the Bureau, there will be no issues added against these five applicants. Also, in the interests of equity and efficiency, the air hazard issue against MPR will not be further prosecuted under any theory involving a failure to meet the FAA's current EMI standards. Nor will any other party face a disqualifying air hazard issue in this case that is based on a failure to meet the FAA's current EMI standards.

#### Ruling

Accordingly, IT IS ORDERED that the Motion To Enlarge Issues filed on October 18, 1989, by Minnesota Public Radio seeking the addition of air hazard issues against Southwest Suburban Broadcasting, Inc., N. Walter Goins, JH Broadcast Limited Partnership, Anne M. Counihan, and Cove Communications, Inc. IS DENIED.

IT IS FURTHER ORDERED that the air hazard issue cited by the Commission against Minnesota Public Radio, insofar as it is based on a failure to meet FAA EMI standards, WILL NOT BE PROSECUTED in this case.

IT IS FURTHER ORDERED that any grant of a construction permit in this proceeding to any applicant who has not satisfied the FAA's EMI standards SHALL BE CONDITIONED in accordance with terms to be submitted by the Mass Media Bureau before a final order is issued by the Presiding Judge.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 91M-1255  
3766

In re Application of	)	MM DOCKET NO. 90-630
	)	
TOPP BROADCASTING LIMITED PARTNERSHIP	)	File No. BPH-880615MB
	)	
	)	
For Construction Permit for a	)	
New FM Station on Channel 287C2	)	
in Stewartville, Minnesota	)	

MEMORANDUM OPINION AND ORDER

Issued: April 9, 1991 : Released: April 11, 1991

1. Under consideration are a Motion for Summary Decision filed on March 21, 1991, by Topp Broadcasting Limited Partnership ("Topp"), and comments in support of the motion filed by the Mass Media Bureau on April 4, 1991.

2. Topp seeks summary decision of the air hazard issue specified against it in the Hearing Designation Order in this proceeding, DA 90-1928, released January 28, 1991 ("HDO"). The issue was predicated upon a determination by the Federal Aviation Administration ("FAA") that Topp's proposal would create a potential for electromagnetic interference ("EMI") to air navigation equipment. To meet this issue, Topp states it is willing to accept a specified condition on its construction permit which would require it, inter alia, to take corrective action should its proposal cause EMI. The Mass Media Bureau supports Topp's motion, stating that the specified condition will moot the air hazard issue.

3. Topp's motion will be granted. Given the imposition of the condition, it is clear that the air hazard issue will become moot, that no genuine issue will remain for determination at the hearing, and that Topp is otherwise entitled to summary decision. See Section 1.251(d) of the Commission's Rules; see also Texas Communications Limited Partnership, 5 FCC Red 5876, 5879 (Rev. Bd. 1990). Further, it is noted that the FAA is a party to this proceeding, that the FAA was served with a copy of Topp's motion, and that the FAA failed to file any opposition or objection to the imposition of a condition in general, or to the imposition of the specific condition sought by Topp. Consequently, the FAA must be deemed to have acquiesced in the resolution of the air hazard issue through the imposition of the condition.

4. With the resolution of the air hazard issue, there remains no impediment to a grant of Topp's application, and it will be granted.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Topp on March 21, 1991, IS GRANTED, and Issue 2 IS RESOLVED in its favor.

IT IS FURTHER ORDERED that the application of Topp Broadcasting Limited Partnership (File No. BPH-880615ME) for a construction permit for a new FM station at Stewartville, Minnesota, IS GRANTED subject to the following conditions:<sup>1</sup>

- (a) Program test authority may not commence on Channel 287C2 until FM Station KWNG (Red Wing, Minnesota) commences program tests on Channel 290C2.
- (b) Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge

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<sup>1</sup> With regard to condition (a), see paragraphs 11 and 19 of the HDO.

Before the  
FEDERAL COMMUNICATIONS COMMISSIONS  
Washington, D.C. 20554

FCC 91M- 1317  
3850

In re Applications of	)	MM DOCKET NO. 91-10
	)	
CHARLEY CECIL & DIANNA MAE WHITE	)	File No. BPH-891213M
d/b/a WHITE BROADCASTING PARTNERSHIP	)	
	)	
PEACHES BROADCASTING, LTD.	)	File No. BPH-891214MN
	)	
SAGE BROADCASTING CORPORATION OF	)	File No. BPH-891214MR
JUPITER, FLORIDA	)	
	)	
DOUGLAS JOHNSON	)	File No. BPH-891214MZ
	)	
NORTHEAST FLORIDA BROADCASTING CORP.	)	File No. BPH-891214NA
	)	
JEM PRODUCTIONS, LIMITED PARTNERSHIP	)	File No. BPH-891214ND
C/O JOYCE MORGAN	)	
	)	
For Construction Permit for a	)	
New FM Station on Channel 289A	)	
in Baldwin, Florida	)	

MEMORANDUM OPINION AND ORDER

Issued: April 12, 1991 ; Released: April 16, 1991


1. Under consideration are 1) Motion for Summary Decision, filed March 21, 1991 by Charley Cecil & Dianna Mae White, d/b/a White Broadcasting Partnership; 2) Mass Media Bureau's Comments in Support of Motion for Summary Decision, filed April 4, 1991. White seeks summary decision on an air hazard issue specified against it. White shows that the Federal Aviation Administration has determined that White's proposed antenna would not pose a structural hazard, but that his proposal has the potential of causing electromagnetic interference ("EMI"). White agrees to the imposition of the following condition upon its construction permit:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

There is no indication that the Federal Aviation Administration objects to the imposition of the condition. The motion for summary decision will be granted.

Accordingly, IT IS ORDERED that the Motion IS GRANTED and the air hazard issue specified against White is resolved, CONDITIONED as set forth above, in his favor.

FEDERAL COMMUNICATIONS COMMISSION

  
Edward Luton  
Administrative Law Judge

CLEMSON BROADCASTING, INC.  
BPH-901219MD

AMENDMENT TO APPLICATION  
CLEMSON, SC

ATTACHMENT 2

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 90-630
	)	
TOPP BROADCASTING LIMITED	)	File Nos. BPH-880615MB
PARTNERSHIP <u>et al.</u>	)	<u>et al.</u>
	)	
For Construction Permit	)	
Channel 287C2	)	
Stewartville, Minnesota	)	

To: Administrative Law Judge  
Arthur I. Steinberg

**MASS MEDIA BUREAU'S COMMENTS ON**  
**MOTION FOR SUMMARY DECISION**

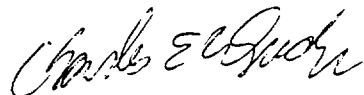
1. On March 21, 1991, Topp Broadcasting Limited Partnership ("Topp") filed a motion for summary decision. Topp seeks favorable resolution of the air hazard issue specified against it in the Hearing Designation Order, 6 FCC Rcd 483 (1991) ("HDO"). The Mass Media Bureau submits the following comments in support of Topp's motion.

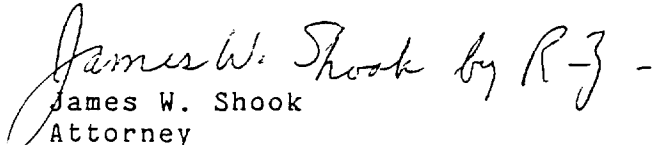
2. Topp's motion shows that the Federal Aviation Administration ("FAA") has determined that Topp's proposal constitutes a hazard to air navigation solely because it may cause electromagnetic interference (EMI) to air navigation facilities. In such situations, acceptance of the condition specified by Topp moots the air hazard issue, making summary decision in its favor appropriate. See, e.g., Texas Communications Limited Partnership, 5876, 5879 (Rev. Bd. 1990) and Section 1.251 of the Commission's Rules. Topp further demonstrates that, in the event of a grant of the pending joint

petition proposing a universal settlement of this proceeding, it is qualified to operate and construct as proposed.

3. Accordingly, the Bureau supports Topp's motion for summary decision and grant of Topp's application, subject to the noted condition and subject to the condition specified in the HDO, namely, that Topp not commence program tests until KWNG, Red Wing, Minnesota, commences program tests on Channel 290C2.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
James W. Shook  
Attorney  
Federal Communications Commission

April 4, 1991

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 4th day of April, 1991, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Motion for Summary Decision" to:

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